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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. LARRY DARNELL MONROE, Defendant and Appellant.	D070387 (Super. Ct. Nos. SCN352205, SCN352174)

APPEAL from judgments of the Superior Court of San Diego County, Michael J. Popkins, Judge. Affirmed with directions.

David W. Beaudreau, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr. and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

In two separate cases, Larry Darnell Monroe pleaded guilty to possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) In both cases, he admitted three prior drug-related felony convictions. (*Id*., § 11370.2, subd. (c).) In one case (case

No. SCN352174), he also admitted a prison prior. (Pen. Code, § 667.5, subd. (b).) In the other (case No. SCN352205), he admitted he committed the charged offense while released on bail. (*Id*., § 12022.1, subd. (b).)

At sentencing, the trial court struck the prison prior, the out-on-bail enhancement, and, in case No. SCN352205 only, the prior drug conviction enhancements. It sentenced Monroe to an aggregate term of 12 years eight months, to be served as follows: six years in local custody and six years eight months on mandatory supervision. As a condition of his mandatory supervision, Monroe was required to "[s]ubmit [his] person, vehicle, residence, property, personal effects, computers, and recordable media [] to search at any time with or without a warrant, and with or without reasonable cause, when required by [the probation officer] or law enforcement officer."

Monroe appeals. He contends (1) the condition requiring him to submit his "computers" and "recordable media" to warrantless search is unreasonable and unconstitutionally overbroad; (2) the trial court erred by applying penalty assessments to the criminal laboratory analysis and drug program fees; (3) the court erred by not specifying the statutory basis for each penalty assessment in its abstract of judgment; (4) the abstract of judgment should be modified to reflect that Monroe admitted, and the trial court struck, one prison prior (rather than two); and (5) the order granting mandatory supervision in case No. SCN352205 should be modified to reflect that the suspended sentence in that case is eight months (rather than 12 years eight months).

The Attorney General concedes the last two points, and we accept that concession. As to Monroe's other arguments, we conclude the electronic search condition is

reasonable and not unconstitutionally overbroad and that the court properly imposed the penalty assessments at issue. We agree, however, with Monroe's contention that the abstract of judgment should specify the amounts and bases of these penalty assessments. We will direct the trial court to modify the abstract of judgment and the order granting mandatory supervision to correct the identified errors. The judgment itself is affirmed.

FACTS

Because Monroe appeals judgments following two guilty pleas, the factual record regarding the underlying offenses is sparse. We will recite the essential facts, as set out in the charging documents, Monroe's guilty pleas, and the probation reports.

In October 2015, sheriff's deputies contacted Monroe and another individual outside a hotel room in Vista, California. The deputies discovered methamphetamine wrapped in a paper towel on the ground directly behind Monroe. During a consensual search of Monroe's hotel room, deputies found an iPhone box containing almost 35 grams of methamphetamines and a working scale. Monroe was carrying almost $1,000 in cash.

Five days later, following Monroe's arrest and release, sheriff's deputies executed a search warrant and searched Monroe's car and hotel room. In the car, deputies found approximately 58 grams of methamphetamine. In the hotel room, deputies found a digital tablet, a digital scale, and an additional gram of methamphetamine in a cigarette box. Monroe was carrying $80 in cash and an iPhone.

DISCUSSION

I

Monroe contends the electronic search condition imposed as part of his mandatory supervision is unreasonable and constitutionally overbroad. The condition requires Monroe to submit his "computers" and "recordable media" to warrantless search when requested by his probation officer or other law enforcement officer. We review the reasonableness of the condition for abuse of discretion under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) and the constitutional issues de novo. For reasons we will explain, we conclude Monroe has not shown any error or abuse of discretion.

A

"The sentencing court has broad statutory discretion in deciding whether to grant supervised release and any accompanying conditions." (*People v. Malago* (2017) 8 Cal.App.5th 1301, 1305 (*Malago*).) " '[T]he Legislature has decided a county jail commitment followed by mandatory supervision imposed under [Penal Code] section 1170, subdivision (h), is akin to a state prison commitment; it is not a grant of probation or a conditional sentence.' [Citation.] Therefore, 'mandatory supervision is more similar to parole than probation.' [Citation.] Courts analyze the validity of the terms of supervised release under standards 'parallel to those applied to terms of parole.' " (*Malago, supra,* at pp. 1305-1306.)

Parole terms, in turn, are analyzed under the same framework as probation conditions. (*Malago, supra,* 8 Cal.App.5th at p. 1306; *People v. Martinez* (2014) 226 Cal.App.4th 759, 764 (*Martinez*).) "Generally, '[a] condition of probation will not be

held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." [Citation.]' [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*), quoting *Lent, supra,* 15 Cal.3d at p. 486.)

The first prong assesses whether there is any relationship between the challenged condition and the crime of which the defendant was convicted. For example, in *People v. Moran* (2016) 1 Cal.5th 398, 401 (*Moran*), the Supreme Court considered a probation condition prohibiting the defendant from entering the premises or adjacent parking lot of any Home Depot store in California. It concluded the first *Lent* prong was not satisfied because the condition was "reasonably related" to the defendants' crime: burglary of a Home Depot store. (*Id.* at p. 404.) The Supreme Court explained, "As the test is one of reasonableness and deference to the trial court's exercise of discretion, we find sufficient grounds to uphold the trial court's choice in this regard." (*Ibid.*)

Similarly here, the challenged electronic search condition fails the first *Lent* prong. Certain electronic devices, such as mobile phones, are recognized as tools of the drug trade. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 921.) At the time of his second arrest, in addition to saleable quantities of methamphetamines and a digital scale, Monroe was found with an iPhone on his person and a digital tablet in his hotel room. These circumstances paralleled the circumstances of a previous arrest (which led to one of his prior drug-related convictions), where Monroe was found with two mobile phones. The

electronic search condition was reasonably related to Monroe's crimes, and based on the first *Lent* prong, the court did not abuse its discretion by imposing it.

Although we need not consider it, application of the third *Lent* prong supports our conclusion. The third *Lent* prong looks beyond the circumstances of the crime and will be satisfied only where the challenged condition is not reasonably related to future criminality. (*Olguin, supra*, 45 Cal.4th at p. 380.) "A condition of probation that enables a probation officer to supervise his or her charges more effectively is . . . 'reasonably related to future criminality.' " (*Id.* at pp. 380-381.) While electronic search conditions undeniably facilitate effective supervision, courts are split on the question of whether such conditions *reasonably* do so, given the breadth of electronic information subject to search. (Compare *In re P.O.* (2016) 246 Cal.App.4th 288, 295 (*P.O.*) [electronic search condition reasonable] with *In re J.B.* (2015) 242 Cal.App.4th 749, 757 [electronic search condition unreasonable].) The same issue, in the juvenile context, is currently pending before the Supreme Court. (*In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923.)

Pending further guidance from the Supreme Court, we take the *Olguin* opinion at its word: "A condition of probation that enables a probation officer to supervise his or her charges more effectively is . . . 'reasonably related to future criminality.' " (*Olguin, supra*, 45 Cal.4th at pp. 380-381.) The electronic search condition at issue here allows law enforcement to supervise Monroe more effectively. His conditions of mandatory supervision include obeying all laws; not knowingly possessing a firearm, ammunition, or a deadly weapon; not knowingly using or possessing alcohol (if directed by his

probation officer); not being in places where alcohol is the main item for sale; and not knowingly using or possessing any controlled substance without a valid prescription. Searching Monroe's electronic devices will assist law enforcement in determining whether he is complying with these conditions. Indeed, given the current ubiquity of electronic communications and interactions, an electronic search condition may well be the only way for a probation officer to discover the bulk of the information relevant to potential criminality and compliance with other conditions of mandatory supervision. A defendant engaged in illegal activities, for example, is much more likely to have digital photographs or communications relating to such activities stored on an electronic device than print photographs and written correspondence stored at home. The electronic search condition is therefore reasonably related to future criminality. (See *P.O., supra*, 246 Cal.App.4th at p. 295; see *In re J.E.* (2016) 1 Cal.App.5th 795, 801 (*J.E.*), review granted Oct. 12, 2016, S236628; *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1176-1177.)

We disagree with the reasoning of *In re J.B., supra*, 242 Cal.App.4th at page 756 and *In re Erica R.* (2015) 240 Cal.App.4th 907, 913 because they require a showing that the defendant has used or is likely to use electronic devices for criminal acts. This requirement goes beyond the third *Lent* prong as interpreted by *Olguin, supra,* 45 Cal.4th 375. Although we agree that *Olguin* does not "compel[] a finding of reasonableness for every probation condition that may potentially assist a probation officer in supervising a probationer" (*People v. Soto* (2016) 245 Cal.App.4th 1219, 1227), *Olguin* does not require a showing that the method of supervision is likely to be particularly effective for the specific defendant at issue. Effectiveness in general is sufficient.

Olguin implies, however, that a probation condition premised on effective supervision may be unreasonable if it imposes an undue hardship or burden. (*Olguin, supra*, 45 Cal.4th at p. 382.) Monroe emphasizes the "limitless" nature of the electronic search condition, the "invasiveness" of any such searches, and the consequent burden on his privacy interests. (See generally *Riley v. California* (2014) 573 U.S. __ [134 S.Ct. 2473].) We disagree that such a burden makes the condition unreasonable. In our view, the condition (and consequent burden) is akin to the standard "three-way" search condition—of a defendant's person, residence, and vehicles—routinely imposed as a condition of probation and required by regulation as a condition of parole. (See, e.g., *People v. Ramos* (2004) 34 Cal.4th 494, 505-506; *People v. Burgener* (1986) 41 Cal.3d 505, 532; *In re Binh L.* (1992) 5 Cal.App.4th 194, 202-203.) One court, cited by Monroe, recognized that a computer hard drive is the digital equivalent of its owner's home in terms of the breadth of private information involved. (*People v. Michael E.* (2014) 230 Cal.App.4th 261, 277, citing *United States v. Mitchell* (11th Cir. 2009) 565 F.3d 1347, 1351.) It follows that, just like a defendant's home, a computer hard drive is properly and reasonably the subject of a search condition. Monroe has not shown the trial court's imposition of a search condition encompassing such digital information was unreasonable or an abuse of discretion.[1]

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1 Given our conclusion, we need not decide whether Monroe forfeited his challenge to the search condition by failing to object in the trial court. We note that the Attorney General has not urged forfeiture in this context. (See *Moran, supra*, 1 Cal.5th at p. 404, fn. 7 [declining to address forfeiture in the absence of argument by the Attorney General].)

B

As noted, Monroe also challenges the electronic search condition as unconstitutionally overbroad. Monroe claims there is no reasonable way to narrow the restriction and tailor it to a legitimate purpose. In his view, it must be stricken. The Attorney General argues, as an initial matter, that Monroe forfeited this challenge because he failed to object to the constitutionality of the condition in the trial court. "In general, the forfeiture rule applies in the context of sentencing as in other areas of criminal law. As a general rule neither party may initiate on appeal a claim that the trial court failed to make or articulate a ' "discretionary sentencing choice[]." ' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 881 (*Sheena K.*).) A limited exception to this general rule extends to facial constitutional challenges, i.e., "a challenge to a term of probation on the ground of unconstitutional vagueness or overbreadth that is capable of correction without reference to the particular sentencing record developed in the trial court[.]" (*Id.* at p. 887; see *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1345 (*Pirali*) ["A Court of Appeal may review the constitutionality of a probation condition, even when it has not been challenged in the trial court, if the question can be resolved as a matter of law without reference to the sentencing record."].)

Monroe does not raise a facial challenge to the constitutionality of the electronic search condition. He does not contend, for example, that the electronic search condition would always be overbroad, regardless of the underlying factual circumstances. Instead, Monroe expressly challenges the electronic search condition "as applied" to him. Because such a challenge depends on the particular sentencing record developed in the

trial court, Monroe has forfeited his "as applied" challenge by failing to raise it in the trial court. (See *Sheena K., supra*, 40 Cal.4th at p. 881; *People v. Smith* (2017) 8 Cal.App.5th 977, 987.)

Even if we were to consider the merits of Monroe's constitutional challenge, we would conclude he has not shown the electronic search condition is unconstitutionally overbroad. " 'A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.' [Citation.] 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*Pirali, supra*, 217 Cal.App.4th at p. 1346.) Here, the record reflects some evidence of the legitimate purpose of the restriction, as we have discussed above: preventing future criminality by promoting effective supervision. We may also identify a burden, in the abstract, on Monroe's general right to privacy based on the possibility of searching his electronic devices. But, as a defendant under mandatory supervision, his privacy rights are "diminished," i.e., they may more readily be burdened by restrictions that serve a legitimate purpose. (See *People v. Nachbar* (2016) 3 Cal.App.5th 1122, 1129, review granted Dec. 14, 2016, S238210; *J.E., supra*, 1 Cal.App.5th at p. 805.) On the current record, we conclude the burden on Monroe's privacy right is insufficient to show overbreadth, given the legitimate penological purpose shown for searching Monroe's electronic devices.

Monroe argues the search condition is overbroad because "it gives officers unfettered access to vast quantities of private, irrelevant information[.]." (Bold type omitted.) But the record is devoid of facts supporting this assertion. For example, the record does not reflect what devices Monroe owns that would be subject to the condition, what Monroe stores on those devices, and how Monroe uses those devices. It is therefore difficult to credit Monroe's claim that the legitimate purpose of the condition does not justify its breadth. (This circumstance is, of course, exactly the reason why the forfeiture rule exists.) As *J.E.* noted, in the juvenile context, "Nothing in the record shows Minor even has a cell phone or any electronic devices, and Minor does not point us to anything in the record showing any actual harms stemming from their inspection." (*J.E., supra*, 1 Cal.App.5th at p. 806, fn. omitted; *id.* at p. 804, fn. 6.) Monroe bears the burden of showing that the challenged condition is unconstitutional. Given the state of the record, we conclude he has not done so.[2]

Monroe relies on three cases in which electronic search conditions were found overbroad. They are distinguishable or do not support his argument under the circumstances of this case. *In re Malik J.* (2015) 240 Cal.App.4th 896 (*Malik J.*) considered a juvenile probation condition requiring the minor to submit his electronic devices for warrantless searching and to provide all passwords to such devices. (*Id.* at

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2 If any actual harm appears during the period of mandatory supervision, Monroe may petition the court to change the electronic search condition. (Pen. Code, § 1203.3, subd. (a); see *J.E., supra*, 1 Cal.App.5th at p. 806 ["Thus, rather than speculate on how Minor's privacy might be impacted by the search condition, we leave Minor to exercise his remedy in the juvenile court should he have specific concerns about how the electronic search condition impacts his privacy."].)

p. 900.) The penological justification for these conditions rested on law enforcement's need to determine whether any such devices in the minor's possession were stolen. (*Id.* at p. 902.) Even given the limited justification, *Malik J.* imposed only minor limits on the search condition to exclude passwords to social media services and to exclude family member devices. (*Id.* at p. 906.) The court also limited the manner of the searches to take place "only after the device has been disabled from any internet or cellular connection and without utilizing specialized equipment designed to retrieve deleted information that is not readily accessible to users of the device." (*Ibid.*) The search condition itself survived scrutiny. (*Ibid.*) Passwords and family member devices are not at issue here, and Monroe makes no argument that the manner of searching should be limited. *Malik J.* does not support Monroe's position.

Similarly, *People v. Appleton* (2016) 245 Cal.App.4th 717 (*Appleton*) found a penological justification in preventing the defendant from "us[ing] social media to contact minors for unlawful purposes[.]" (*Id.* at p. 727.) Given that limited justification, the court struck a general electronic search condition and remanded the matter to the trial court to craft a narrower condition. (*Ibid.*) Here, the penological justification is not so limited, and *Appleton* is inapplicable.

The third case, *P.O.*, limited an electronic search condition to only "any medium of communication reasonably likely to reveal whether [the defendant was] boasting about [his] drug use or otherwise involved with drugs[.]" (*P.O.*, *supra*, 246 Cal.App.4th at p. 300.) Given the broader penological justification for Monroe's search condition, such a narrow limitation is unwarranted. *P.O.* is unpersuasive.

We note that Monroe has not challenged the remainder of his search condition, covering his "person, vehicle, residence, property, [and] personal effects," as unconstitutionally overbroad. While searches involving electronic devices *may* raise unique issues of privacy not found in searches of these more traditional categories, we see no need to depart from our well-established treatment of search conditions whenever the condition implicates electronic devices. As *J.E.* explained, "[C]ourts have historically allowed parole and probation officers significant access to other types of searches, including home searches, where a large amount of personal information—from medical prescriptions, banking information, and mortgage documents to love letters, photographs, or even a private note on the refrigerator—could presumably be found and read. [Citations.] In cases involving probation or parole house search conditions, we have found no instances in which courts have carved out exceptions for the same type of information Minor argues could potentially be on his electronics." (*J.E.*, *supra*, 1 Cal.App.5th at p. 804, fn. 6.) As we have explained, nothing in the record here justifies narrowing the challenged electronic search condition.

We further reject Monroe's claim that the electronic search condition should be stricken based on ineffectiveness of counsel. Even if Monroe's counsel should have objected to the electronic search condition as unconstitutionally overbroad, there is nothing in the current record that would demonstrate prejudice, i.e., a reasonable probability that the electronic search condition would have been modified if his counsel had objected. (See *Strickland v. Washington* (1984) 466 U.S. 668, 684-685; *People v. Hart* (1999) 20 Cal.4th 546, 624.)

III

Monroe contends the trial court erred by increasing the amounts assessed for the "criminal laboratory analysis fee" (Health & Saf. Code, § 11372.5, subd. (a)) and the "drug program fee" (*id.*, § 11372.7, subd. (a)) to incorporate various penalty assessments. Penalty assessments apply to any "fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses" and increase such fines, penalties, or forfeitures by a specified amount. (E.g., Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1); see *People v. Watts* (2016) 2 Cal.App.5th 223, 229 (*Watts*) [identifying various penalty assessments].) Although Monroe did not object to the penalty assessments in the trial court, we may consider his argument on appeal because the erroneous imposition of penalty assessments is an unauthorized sentence that may be raised for the first time in this court. (*Id.* at p. 227, fn. 4; see *People v. Anderson* (2010) 50 Cal.4th 19, 26; *People v. Walz* (2008) 160 Cal.App.4th 1364, 1369.)

Monroe argues that the criminal laboratory analysis fee and the drug program fee are not fines or penalties and therefore the court should not have applied penalty assessments to them. Moore's argument presents a question of statutory interpretation, which we review de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.) " 'As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.]' [Citation.] ' "When the language of a statute is clear, we need go no further." [Citation.] But where a statute's terms are unclear or ambiguous, we may "look to a

variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." ' " (*People v. Harrison* (2013) 57 Cal.4th 1211, 1221-1222.)

Here, both the criminal laboratory analysis fee and the drug program fee are described as fines or penalties in their respective statutes. After specifying the amount of the criminal laboratory analysis fee ($50), the statute states: "The court shall increase the total *fine* necessary to include this increment." (Health & Saf. Code, § 11372.5, subd. (a), italics added.) If no other fine is applicable, "the court shall, upon conviction, impose a *fine* in an amount not to exceed fifty dollars ($50), which shall constitute the increment prescribed by this section and which shall be in addition to any other *penalty* prescribed by law." (*Ibid.*, italics added.) Similarly, after specifying the amount of the drug program fee ($150), the statute states, "The court shall increase the total *fine*, if necessary, to include this increment, which shall be in addition to any other *penalty* prescribed by law." (*Id.*, § 11372.7, subd. (a), italics added.) By the plain terms of the statutes, therefore, these fees are fines and penalties. The fact that the statutes describe these amounts as fees as well is not dispositive.

People v. Sierra (1995) 37 Cal.App.4th 1690 (*Sierra*) analyzed the drug program fee statute and came to the same conclusion. It pointed out that the drug program fee statute itself used the terms "fine" and "penalty," exactly the terms used in the penalty assessment statutes. (*Id.* at p. 1695.) Rejecting the defendant's contrary argument, *Sierra* explained, "[Defendant's] interpretation of Health and Safety Code section 11372.7

would lead to absurd consequences by reading out of that very section the fact that it is a fine and/or a penalty. So reading the statute, the trial court could not impose an otherwise mandatory penalty assessment. [Defendant's] interpretation does violence to the express language of the statute and to the clear intent of the Legislature, and would lead to an absurd result." (*Sierra, supra,* at p. 1696.) "The only reasonable interpretation of Health and Safety Code section 11372.7 is that it is a fine and/or a penalty to which the penalty assessment provisions of Penal Code section 1464 and Government Code section 76000 apply." (*Sierra, supra,* at p. 1696.)

People v. Martinez (1998) 65 Cal.App.4th 1511 (*Martinez*) relied on *Sierra's* (*Sierra, supra,* 37 Cal.App.4th 1690) reasoning to reach the same conclusion in the context of the criminal laboratory analysis fee. It explained, "Under the reasoning of *Sierra*, we conclude Health and Safety Code section 11372.5, defines the criminal laboratory analysis fee as an increase to the total fine and therefore is subject to penalty assessments under section 1464 and Government Code section 76000." (*Martinez, supra,* at p. 1522.) Other courts agree. (See, e.g., *People v. Jordan* (2003) 108 Cal.App.4th 349, 368 [criminal laboratory analysis fee]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1256-1257 [same]; see *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 [holding that the criminal laboratory analysis fee is a fine].) The Supreme Court has likewise approved of penalty assessments in the context of a criminal laboratory analysis fee. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153 (*Talibdeen*).)

More recently, as Monroe points out, *Watts, supra,* 2 Cal.App.5th 223 disagreed with this consensus. *Watts* concluded that the criminal laboratory analysis fee was not a

fine or penalty and therefore not subject to penalty assessments. (*Id.* at p. 227.) It criticized the reasoning of *Sierra, supra,* 37 Cal.App.4th 1690 and *Martinez, supra*, 65 Cal.App.4th 1511 and concluded that *Talibdeen*'s (*Talibdeen, supra,* 27 Cal.4th 1151) discussion of the issue was not controlling. (*Watts, supra,* at pp. 230-232.) *Watts* was unmoved by the statute's use of the term "total fine": "As to the statute's reference to 'total fine,' we fail to perceive how the fact that the crime-lab fee increases the 'total fine' necessarily means the fee is itself a 'fine' subject to penalty assessments. Nothing about the statute's use of the phrase 'total fine' is inconsistent with the conclusion that the crime-lab fee simply gets added to the overall charge imposed on the defendant after penalty assessments are calculated." (*Id.* at p. 234.) Similarly, *Watts* found unpersuasive the second paragraph of the criminal laboratory analysis fee statute, which states the fee amount should be imposed as a "fine" if no other fine is applicable. (*Id.* at p. 237; see Health & Saf. Code, § 11372.5, subd. (a).) *Watts* deemed that paragraph irrelevant because other fines were in fact applicable to the defendant. (*Watts, supra,* at p. 238.) *Watts* therefore believed its interpretation of the first paragraph was "controlling" and the criminal laboratory analysis fee was not a fine or penalty to which penalty assessments could be applied. (*Ibid.*)

Watt's reasoning is not persuasive. To begin, we cannot disregard our Supreme Court's holding in *Talibdeen.* The Supreme Court stated, "At sentencing, the trial court imposed, among other things, a laboratory analysis fee of $50 pursuant to Health and Safety Code section 11372.5, subdivision (a). Although subdivision (a) of Penal Code section 1464 and subdivision (a) of Government Code section 76000 *called for* the

imposition of state and county penalties based on such a fee, the trial court did not levy these penalties, and the People did not object at sentencing. Nonetheless, the Court of Appeal imposed the penalties because they were mandatory—and not discretionary—sentencing choices." (*Talibdeen, supra*, 27 Cal.4th at p. 1153, fns. omitted, italics added.) After noting that the penalty assessments were "called for" by statute, the Supreme Court in a footnote provided the applicable calculations: "Based on the $50 laboratory fee, the state penalty would have been $50 (see Pen. Code, § 1464, subd. (a)), and the county penalty would have been $35 (see Gov. Code, § 76000, subd. (a))." (*Talibdeen, supra*, at p. 1153, fn. 2.) Although it does not appear that the defendant in *Talibdeen* argued that penalty assessments were not applicable to the criminal laboratory analysis fee, the Supreme Court plainly believed they were. Later in its opinion, the Supreme Court reiterated this holding: "Thus, at the time of sentencing, the trial court had no choice and had to impose state and county penalties in a statutorily determined amount on defendant. The erroneous omission of these penalties therefore 'present[ed] a pure question of law with only one answer . . . .' [Citation.] Accordingly, we follow our lower courts and hold that the Court of Appeal properly corrected the trial court's omission of state and county penalties even though the People raised the issue for the first time on appeal." (*Id.* at p. 1157.) Even if *Talibdeen* cannot stand directly for the proposition that penalty assessments should be applied to the criminal laboratory analysis fee because it was not directly raised (see *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176), the Supreme Court's discussion of the issue is nonetheless persuasive.

Turning to *Watts*'s discussion of the statute itself, we disagree that the statute's instruction to increase the "total fine" by the criminal laboratory analysis fee means that the fee does not constitute a fine. (See *Watts, supra*, 2 Cal.App.5th at p. 234.) And the second paragraph, even if inapplicable here, shows that the Legislature intended the criminal laboratory analysis fee to constitute a fine. It would be absurd for the criminal laboratory analysis fee to be a fine only when no other fine was applied. It must be the same in both situations. One paragraph need not "control over" the other, as *Watts* contends. (See *ibid.*) Instead, both paragraphs should be read together to determine the Legislature's intent.[3]

Watts also relies *People v. Vega* (2005) 130 Cal.App.4th 183 (*Vega*), which did not consider penalty assessments. *Vega* instead considered whether the criminal laboratory analysis fee is "punishment" under Penal Code section 182, subdivision (a), relating to conspiracy liability. (*Id.* at p. 194.) *Vega* held that the fee was not punishment for purposes of that statute, based on its analysis of the nature and purposes of the fee.

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3 We likewise disagree with *Watts*'s interpretation of the legislative history of the criminal laboratory analysis fee statute. *Watts* points out that the statute originally called for the payment of "an increment in the amount of fifty dollars ($50)" as part of "any fine imposed" following conviction. (Stats. 1980, ch. 1222, § 1, p. 4140; see *Watts, supra*, 2 Cal.App.5th at p. 235.) Three years later, the statute was amended to its current form. (Stats. 1983, ch. 626, § 1, p. 2527.) Based on this evolution, *Watts* concluded, "The elimination of the reference to the fee's being part of the 'fine imposed' and its renaming from an 'increment' to a 'fee' strongly suggest that the Legislature did not intend the fee to be a 'fine, penalty, or forfeiture' because [Health and Safety Code] section 11372.5 calls it something else." (*Watts, supra*, at p. 234.) We disagree. In our view, the statute continues to characterize the fee as a fine or penalty for reasons we have already discussed. The current statute is therefore consistent with its predecessor, as shown by the continued use of the terms "increment" and "fine."

(*Id.* at p. 195.) Six years later, *People v. Sharret* (2011) 191 Cal.App.4th 859 (*Sharret*) disagreed. It held, in the context of Penal Code section 654, that the criminal laboratory analysis fee was punitive in nature. (*Sharret, supra,* at p. 869.) Although it did not mention *Vega*, *Sharret*'s analysis of the statute was directly contradictory. Based on our review, we find *Sharret* to be the more well-reasoned opinion. *Watts*'s reliance on *Vega* is therefore unpersuasive.[4]

In sum, we conclude the statutes' characterization of the criminal laboratory analysis fee and drug program fee as part of the "total fine" and as "penalt[ies]" demonstrates the Legislature's intent that the fees are "fine[s]" or "penalt[ies]" under the statutes governing penalty assessments. Nothing in the legislative history or other context justifies a departure from this plain language. The trial court therefore did not err by imposing penalty assessments on these fees following Monroe's conviction.

III

Monroe further contends, if the penalty assessments were properly applied, that their statutory bases and amounts should be set forth in the abstract of judgment. He argues the trial court erred by simply listing, as the applicable fee, the fee amount and the penalty assessments as a single total figure. We agree.

A number of courts have concluded that the abstract of judgment must specify the nature and amount of penalty assessments imposed following a criminal conviction, in addition to the base fines. (See, e.g., *People v. Johnson* (2015) 234 Cal.App.4th 1432,

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4 The issue in *Vega, supra,* 130 Cal.App.4th 183 is currently under review by the Supreme Court. (*People v. Ruiz*, review granted Sept. 14, 2016, S235556.)

1459; *People v. Hamed* (2013) 221 Cal.App.4th 928, 940; *Sharret, supra*, 191 Cal.App.4th at p. 864; *People v. High* (2004) 119 Cal.App.4th 1192, 1200.) As part of the abstract, the trial court is required "to list the amount and statutory basis for each base fine and the amount and statutory basis for each penalty assessment in the abstract of judgment." (*Hamed*, *supra*, at p. 940.)

In opposition, the Attorney General primarily argues that the trial court should not be required to include penalty assessments in its oral pronouncement of judgment. (See *People v. Voit* (2011) 200 Cal.App.4th 1353, 1373; *Sharret, supra,* 191 Cal.App.4th at p. 864.) But Monroe does not claim error in the trial court's oral pronouncement. He seeks modification of the abstract of judgment. The Attorney General does not directly address this issue; his argument is therefore unpersuasive. We conclude the abstract of judgment should be modified to include the amount and statutory basis for each penalty assessment.

IV

Monroe identifies an additional error in the abstract of judgment and an error in the order granting mandatory supervision in case No. SCN352205. He contends the abstract of judgment should be modified to reflect that Monroe admitted, and the trial court struck, one prison prior (rather than two) and the order granting mandatory supervision should be modified to reflect that the suspended sentence in that case is eight months (rather than 12 years eight months).

The Attorney General concedes both errors should be corrected. We agree as well. We will direct the trial court to modify the abstract of judgment and the order granting mandatory supervision accordingly.

DISPOSITION

The judgment is affirmed. The trial court is directed to modify the abstract of judgment to (1) list the amount and statutory basis for each base fine and the amount and statutory basis for each penalty assessment and (2) reflect that Monroe admitted, and the trial court struck, one prison prior. The trial court is further directed to modify the order granting mandatory supervision in case No. SCN352205 to reflect that the suspended sentence in that case is eight months.

HUFFMAN, J.

I CONCUR:

BENKE, Acting P. J.

AARON, J.

I concur in the conclusion that the electronics search condition is valid under *People v. Lent* (1975) 15 Cal.3d 481 because the condition is reasonably related to the crime of which Monroe was convicted. Although there is no evidence in the record of Monroe's specific use of electronics devices in connection with the crimes charged in this case, as the opinion notes, mobile phones are recognized as tools of the drug trade, Monroe had an iPhone and digital tablet in his possession at the time of his arrest, and at the time of a prior drug-related arrest, he was in possession of two mobile phones. In addition, he has three prior convictions for drug sales. It is thus reasonable to assume that he might use his electronic devices to engage in drug-related activity.

I also agree with the majority that Monroe has forfeited his right to challenge the constitutionality of the electronics search condition. Because Monroe did not object to the condition at the time it was imposed, he would be permitted to raise only a facial challenge to the condition. As the opinion notes, however, Monroe does not raise a facial challenge but instead, purports to challenge the condition as applied.

However, I would not address the merits of Monroe's as applied constitutional challenge because the state of the record is inadequate to permit this court to sufficiently address such a challenge. As the majority states, "the record does not reflect what devices Monroe owns that would be subject to the condition, what Monroe stores on those devices, and how Monroe uses those devices." Further, although the majority asserts that "[p]asswords . . . are not at issue here," that fact is not clear from the record, given that passwords or passcodes might be required in order to effectuate the warrantless

searches of Monroe's "computers" and "recordable media," pursuant to the condition at issue here. There are simply not sufficient facts in the record to enable this court to determine how the condition would be applied to Monroe. In addition, I have serious doubts concerning the majority's analysis of the condition as applied. In particular, I am concerned that the breadth of the "legitimate penological purpose" for the search condition that the majority identifies, i.e., "preventing future criminality by promoting effective supervision," would render constitutional virtually any electronic device search condition of a person on mandatory supervision. Accordingly, I do not join in the majority's analysis of Monroe's as applied challenge. I concur in the remainder of the opinion.

AARON, J.